

TO BE RECORDED AND WHEN RECORDED
RETURN TO:

Jones Hall, A Professional Law Corporation
650 California Street, 18th Floor
San Francisco, California 94111
Attention: Christopher K. Lynch, Esq.

THIS TRANSACTION IS EXEMPT FROM CALIFORNIA DOCUMENTARY TRANSFER TAX UNDER SECTION 11922 OF THE CALIFORNIA REVENUE AND TAXATION CODE. THIS DOCUMENT IS EXEMPT FROM RECORDING FEES UNDER SECTION 27383 OF THE CALIFORNIA GOVERNMENT CODE.

Draft
LEASE AGREEMENT

Dated as of _____ 1, 2016

between the

HAYWARD PUBLIC FINANCING AUTHORITY
as lessor

and the

CITY OF HAYWARD
as lessee

Relating to

\$ _____
2016 Refunding Certificates of Participation
(Civic Center and Capital Projects - 2007 Refunding), Series A

\$ _____
2016 Federally Taxable Refunding Certificates of Participation
(Civic Center and Capital Projects - 2007 Refunding), Series B

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LEASE AGREEMENT

This LEASE AGREEMENT (this "Lease"), dated as of _____ 1, 2016, is between the HAYWARD PUBLIC FINANCING AUTHORITY, a joint exercise of powers authority duly organized and existing under the laws of the State of California (the "Authority"), and the CITY OF HAYWARD, a municipal corporation duly organized and existing under the laws of the State of California (the "City").

BACKGROUND:

1. The City has previously leased certain real property to the Authority under a Site Lease, dated as of August 1, 2007 (the "Prior Site Lease"), and the Authority has concurrently leased such land and improvements back to the City under a Lease Agreement, dated as of August 1, 2007 (the "Prior Lease").

2. The City's lease payment obligations under the Prior Lease are evidenced by 2007 Refunding Certificates of Participation (Civic Center and Capital Projects) in the aggregate principal amount of \$31,820,000 (the "Prior Certificates") under a Trust Agreement dated as of August 1, 2007, among the City, the Authority and The Bank of New York Mellon Trust Company, N.A. (the "2007 Trustee").

3. The City has determined that it is in the best interests of the City at this time to refinance its obligations under the Prior Lease which are represented by the Prior Certificates, by exercising its right to prepay its lease payment obligations under the Prior Lease and thereby prepaying the Prior Certificates in full on August 1, 2017.

4. In order to raise funds required for that purpose, the City has leased certain real property, including land and improvements constituting the Civic Center located at 777 B Street (collectively, the "Leased Property"), to the Authority under a Site Lease dated as of _____ 1, 2016, between the City and the Authority (the "Site Lease") which is recorded concurrently herewith, and the Authority has agreed to lease the Leased Property back to the City under this Lease.

5. The Authority has further agreed to assign its right to receive lease payments under this Lease to The Bank of New York Mellon Trust Company, N.A., as trustee (the "Trustee"), and in consideration of such assignment the Trustee has agreed to execute and deliver (i) \$_____ aggregate principal amount of 2016 Refunding Certificates of Participation (Civic Center and Capital Projects - 2007 Refunding), Series A (the "Series A Certificates") and (ii) \$_____ aggregate principal amount of 2016 Federally Taxable Refunding Certificates of Participation (Civic Center and Capital Projects - 2007 Refunding), Series B (the "Series B Certificates"), each evidencing a direct, undivided fractional interest in the lease payments to be paid by the City under this Lease, the proceeds of which will be applied by the Authority to refinance the Prior Certificates, under a Trust Agreement dated as of _____ 1, 2016 (the "Trust Agreement"), among the Authority, the City and the Trustee.

6. The City is authorized to enter into the Site Lease and this Lease with the Authority under Section 37350 of the California Government Code, and the Authority is

authorized to enter into the Site Lease and this Lease under the provisions of Section 6588 of the Government Code of the State of California.

A G R E E M E N T :

In consideration of the foregoing and the material covenants hereinafter contained, the City and the Authority formally covenant, agree and bind themselves as follows:

ARTICLE I

DEFINITIONS; RULES OF INTERPRETATION

SECTION 1.1. *Definitions.* Unless the context clearly otherwise requires or unless otherwise defined herein, the capitalized terms in this Lease have the respective meanings specified in the recitals hereof and in Appendix A to the Trust Agreement.

SECTION 1.2. *Interpretation.*

(a) Unless the context otherwise indicates, words expressed in the singular include the plural and vice versa and the use of the neuter, masculine, or feminine gender is for convenience only and include the neuter, masculine or feminine gender, as appropriate.

(b) Headings of articles and sections herein and the table of contents hereof are solely for convenience of reference, do not constitute a part hereof and do not affect the meaning, construction or effect hereof.

(c) All references herein to "Articles," "Sections" and other subdivisions are to the corresponding Articles, Sections or subdivisions of this Lease; the words "herein," "hereof," "hereby," "hereunder" and other words of similar import refer to this Lease as a whole and not to any particular Article, Section or subdivision hereof.

ARTICLE II

COVENANTS, REPRESENTATIONS AND WARRANTIES

SECTION 2.1. *Covenants, Representations and Warranties of the City.* The City makes the following covenants, representations and warranties to the Certificate Insurer and the Authority as of the Closing Date:

(a) Due Organization and Existence. The City is a municipal corporation duly organized and validly existing under the laws of the State of California, has full legal right, power and authority under the laws of the State of California to enter into this Lease, the Site Lease and the Trust Agreement and to carry out and consummate all transactions contemplated hereby and thereby, and by proper

action the City has duly authorized the execution and delivery of this Lease, the Site Lease and the Trust Agreement.

- (b) Due Execution. The representatives of the City executing this Lease, the Site Lease and the Trust Agreement have been fully authorized to execute the same under a resolution duly adopted by the City Council of the City.
- (c) Valid, Binding and Enforceable Obligations. This Lease, the Site Lease and the Trust Agreement have been duly authorized, executed and delivered by the City and constitute the legal, valid and binding agreements of the City enforceable against the City in accordance with their respective terms.
- (d) No Conflicts. The execution and delivery of this Lease, the Site Lease and the Trust Agreement, the consummation of the transactions herein and therein contemplated and the fulfillment of or compliance with the terms and conditions hereof, do not and will not conflict with or constitute a violation or breach of or default (with due notice or the passage of time or both) under any applicable law or administrative rule or regulation, or any applicable court or administrative decree or order, or any indenture, mortgage, deed of trust, lease, contract or other agreement or instrument to which the City is a party or by which it or its properties are otherwise subject or bound, or result in the creation or imposition of any prohibited lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the City, which conflict, violation, breach, default, lien, charge or encumbrance would have consequences that would materially and adversely affect the consummation of the transactions contemplated by this Lease, the Site Lease and the Trust Agreement or the financial condition, assets, properties or operations of the City.
- (e) Consents and Approvals. No consent or approval of any trustee or holder of any indebtedness of the City or of the voters of the City, and no consent, permission, authorization, order or license of, or filing or registration with, any governmental authority is necessary in connection with the execution and delivery of this Lease, the Site Lease and the Trust Agreement, or the consummation of any transaction herein or therein contemplated, except as have been obtained or made and as are in full force and effect.
- (f) No Litigation. There is no action, suit, proceeding, inquiry or investigation before or by any court or federal, state, municipal or other governmental authority pending or, to the knowledge of the City after reasonable investigation, threatened against or affecting the City or the assets, properties or operations of the City which, if determined adversely to the City or its interests, would have a material and adverse effect upon the consummation of the transactions contemplated by or the validity of this Lease, the Site Lease or the Trust Agreement, or upon the financial condition,

assets, properties or operations of the City, and the City is not in default with respect to any order or decree of any court or any order, regulation or demand of any federal, state, municipal or other governmental authority, which default might have consequences that would materially and adversely affect the consummation of the transactions contemplated by this Lease, the Site Lease or the Trust Agreement or the financial conditions, assets, properties or operations of the City.

- (g) Essentiality of Leased Property. The Leased Property is essential to the City's purposes.

SECTION 2.2. *Covenants, Representations and Warranties of the Authority.* The Authority makes the following covenants, representations and warranties to the City as of the Closing Date:

- (a) Due Organization and Existence. The Authority is a joint exercise of powers authority duly organized and existing under the laws of the State of California, has full legal right, power and authority to enter into this Lease, the Site Lease, the Trust Agreement and the Assignment Agreement and to carry out and consummate all transactions contemplated hereby and thereby, and by proper action the Authority has duly authorized the execution and delivery of this Lease, the Site Lease, the Trust Agreement and the Assignment Agreement.
- (b) Due Execution. The representatives of the Authority executing this Lease, the Site Lease, the Trust Agreement and the Assignment Agreement are fully authorized to execute the same under official action taken by the Board of Directors of the Authority.
- (c) Valid, Binding and Enforceable Obligations. This Lease, the Site Lease, the Trust Agreement and the Assignment Agreement have been duly authorized, executed and delivered by the Authority and constitute the legal, valid and binding agreements of the Authority, enforceable against the Authority in accordance with their respective terms.
- (d) No Conflicts. The execution and delivery of this Lease, the Site Lease, the Trust Agreement and the Assignment Agreement, the consummation of the transactions herein and therein contemplated and the fulfillment of or compliance with the terms and conditions hereof, do not and will not conflict with or constitute a violation or breach of or default (with due notice or the passage of time or both) under any applicable law or administrative rule or regulation, or any applicable court or administrative decree or order, or any indenture, mortgage, deed of trust, lease, contract or other agreement or instrument to which the Authority is a party or by which it or its properties are otherwise subject or bound, or result in the creation or imposition of any prohibited lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the

Authority, which conflict, violation, breach, default, lien, charge or encumbrance would have consequences that would materially and adversely affect the consummation of the transactions contemplated by this Lease, the Site Lease, the Trust Agreement and the Assignment Agreement or the financial condition, assets, properties or operations of the Authority.

- (e) Consents and Approvals. No consent or approval of any trustee or holder of any indebtedness of the Authority, and no consent, permission, authorization, order or license of, or filing or registration with, any governmental authority is necessary in connection with the execution and delivery of this Lease, the Site Lease, the Trust Agreement or the Assignment Agreement, or the consummation of any transaction herein or therein contemplated, except as have been obtained or made and as are in full force and effect.

- (f) No Litigation. There is no action, suit, proceeding, inquiry or investigation before or by any court or federal, state, municipal or other governmental authority pending or, to the knowledge of the Authority after reasonable investigation, threatened against or affecting the Authority or the assets, properties or operations of the Authority which, if determined adversely to the Authority or its interests, would have a material and adverse effect upon the consummation of the transactions contemplated by or the validity of this Lease, the Site Lease, the Trust Agreement or the Assignment Agreement, or upon the financial condition, assets, properties or operations of the Authority, and the Authority is not in default with respect to any order or decree of any court or any order, regulation or demand of any federal, state, municipal or other governmental authority, which default might have consequences that would materially and adversely affect the consummation of the transactions contemplated by this Lease, the Site Lease, the Trust Agreement or the Assignment Agreement or the financial conditions, assets, properties or operations of the Authority.

ARTICLE III

DEPOSIT AND APPLICATION OF FUNDS; REFUNDING OF PRIOR LEASE OBLIGATIONS

SECTION 3.1. *Deposit of Moneys.* On the net Closing Date, the Authority shall cause the proceeds of sale of the Certificates to be deposited with the Trustee. Under Section 4.01 of the Trust Agreement, from the net proceeds of sale of the Certificates, the estimated amount of the Costs of Issuance will be deposited in the Costs of Issuance Fund and the balance of such proceeds will be used to pay the City's lease payment obligations under the Prior Lease, and thereby prepay the Prior Certificates.

In addition, an amount representing the premiums for the Reserve Policy will be wired to the Reserve Policy Provider by the Original Purchaser.

SECTION 3.2. *Refunding of Prior Lease Obligations.* The Authority covenants that a portion of the proceeds of the Certificates will be applied for the purpose of discharging in full all of the City's obligations under the Prior Lease and thereby refunding and discharging the Prior Certificates, all as of the Closing Date.

ARTICLE IV

LEASE PAYMENTS; SUBSTITUTION AND RELEASE OF PROPERTY

SECTION 4.1. *Lease of Leased Property.* The Authority hereby leases the Leased Property to the City, and the City hereby leases the Leased Property from the Authority, upon the terms and conditions set forth in this Lease.

SECTION 4.2. *Term.* The Term of this Lease commences on the date of execution and delivery hereof and ends on the date on which the Trust Agreement is discharged under Section 13.01 thereof, but under any circumstances not later than November 1, 2026. The provisions of this Section 4.2 are subject to the provisions of Section 4.6 relating to the substitution of property, the provisions of Section 4.7 relating to the release of property, and the provisions of Section 6.2 relating to the taking in eminent domain of the Leased Property or any portion thereof.

SECTION 4.3. *Lease Payments.*

(a) Obligation to Pay. Subject to the provisions of Sections 6.2 and 6.3 and the provisions of Article IX, the City will pay to the Authority, its successors and assigns, the Lease Payments (denominated into components of principal and interest) in the respective amounts specified in Appendix B hereto, to be due and payable in immediately available funds on the Interest Payment Dates immediately following each of the respective Lease Payment Dates specified in Appendix B, and to be deposited by the City with the Trustee on each of the Lease Payment Dates specified in Appendix B. Any amount held in the Lease Payment Fund on any Lease Payment Date (other than amounts resulting from the prepayment of the Lease Payments in part but not in whole under Article IX and other than amounts required for payment of past due principal or

interest represented by any Certificates not presented for payment) will be credited towards the Lease Payment then required to be paid; and no Lease Payment need be deposited with the Trustee on any Lease Payment Date if the amounts then held in the Lease Payment Fund are at least equal to the Lease Payment then required to be deposited with the Trustee. The Lease Payments payable in any Rental Period are for the use of the Leased Property during such Rental Period.

(b) Effect of Prepayment. If the City prepays all Lease Payments in full under Sections 9.2 or 9.3, and if the City has paid all Additional Payments then due and payable, the City's obligations under this Section will thereupon cease and terminate. If the City prepays the Lease Payments in part but not in whole under Sections 9.2 or 9.3, the principal components of the remaining Lease Payments will be reduced in integral multiples of \$5,000 among Lease Payment Dates on a basis which corresponds to the principal maturities of the Certificates which are prepaid thereby; and the interest component of each remaining Lease Payment will be reduced by the aggregate corresponding amount of interest which would otherwise be payable with respect to the Certificates thereby prepaid under Sections 3.01(a) or 3.01(b) of the Trust Agreement, as the case may be.

(c) Rate on Overdue Payments. If the City fails to make any of the payments required in this Section 4.3, the payment in default will continue as an obligation of the City until the amount in default has been fully paid, and the City agrees to pay the same with interest thereon, from the date of default to the date of payment at the highest rate of interest represented by any Outstanding Certificate.

(d) Fair Rental Value. The Lease Payments and Additional Payments coming due and payable during each Rental Period constitute the total rental for the Leased Property for such Rental Period, and the City will pay the Lease Payments and Additional Payments in each Rental Period for and in consideration of the right of the use and occupancy of, and the continued quiet use and enjoyment of the Leased Property during each Rental Period. The Authority and the City have agreed and determined that the total Lease Payments represent the fair rental value of the Leased Property. In making that determination, consideration has been given to the estimated value of the Leased Property as of the Closing Date, other obligations of the City and the Authority under this Lease, the uses and purposes which may be served by the Leased Property and the benefits therefrom which will accrue to the City and the general public.

(e) Source of Payments; Budget and Appropriation. The Lease Payments are payable from any source of available funds of the City, subject to the provisions of Articles VI and IX. The City covenants to take such action as may be necessary to include all estimated Lease Payments and all estimated Additional Payments due hereunder in each of its final approved budgets. The City further covenants to make all necessary appropriations (including any supplemental appropriations) from any source of legally available funds of the City for all the actual amount of Lease Payments and Additional Payments which come due and payable during the period covered by each such budget. The covenants on the part of the City contained herein are duties imposed by law and it is the duty of each and every public official of the City to take such action and do such things as are required by law in the performance of the official duty of such officials to enable the City to carry out and perform the covenants and agreements in this Lease agreed to be carried out and performed by the City.

(f) Assignment. The City acknowledges that all Lease Payments have been assigned by the Authority to the Trustee in trust under the Assignment Agreement dated as of _____ 1, 2016 and recorded concurrently herewith, for the benefit of the Owners of the Certificates, and the City consents to such assignment. The Authority directs the City, and the City agrees to pay to the Trustee at its Office, all payments payable by the City under this Section 4.3 and all amounts payable by the City under Article IX.

SECTION 4.4. *Additional Payments*. In addition to the Lease Payments, the City shall pay when due, as additional rental for the Leased Property hereunder, all costs and expenses incurred by the City hereunder or under the Trust Agreement, or incurred by the Authority to comply with the provisions of the Trust Agreement, including without limitation all Costs of Issuance (to the extent not paid from amounts on deposit in the Costs of Issuance Fund), annual compensation due to the Trustee and all of its reasonable costs and expenses (including amounts payable to the Trustee by virtue of indemnification) payable as a result of the performance of and compliance with its duties under the Trust Agreement, and all reasonable costs and expenses of attorneys, auditors, engineers and accountants engaged by the Authority or the Trustee in connection with the Leased Property or the performance of their duties hereunder or under the Trust Agreement.

SECTION 4.5. *Title*. At all times during the Term of this Lease, the City will hold title to the Leased Property, subject to the Site Lease and other Permitted Encumbrances, including all additions which comprise fixtures, repairs, replacements or modifications thereto, and subject to the provisions of Section 5.2.

Upon the termination of this Lease (other than under Section 8.2(b) hereof), all right, title and interest of the Authority in and to the Leased Property will be transferred to and vested in the City. Upon the payment in full of all Lease Payments allocable to the Leased Property, or upon the deposit by the City of security for such Lease Payments as provided in Section 9.1, all right, title and interest of the Authority in and to the Leased Property will be transferred to and vested in the City. The Authority agrees to take any and all steps and execute and record any and all documents reasonably required by the City to consummate any such transfer of title.

SECTION 4.6. *Substitution of Property*. The City has the option at any time and from time to time to substitute other real property (the "Substitute Property") for the Leased Property or any portion thereof (the "Former Property"), provided that the City must satisfy all of the following requirements which are hereby declared to be conditions precedent to such substitution:

- (a) No Event of Default has occurred and is continuing.
- (b) The City has filed with the Authority and the Trustee, and has caused to be recorded in the office of the Alameda County Recorder sufficient memorialization of, an amendment hereof which adds to Appendix A hereto a description of such Substitute Property and deletes therefrom the description of such Former Property.
- (c) The City has obtained a CLTA policy of title insurance which insures the City's leasehold estate hereunder in such Substitute Property,

subject only to Permitted Encumbrances, in an amount at least equal to the estimated value thereof.

- (d) The City has certified in writing to the Authority and the Trustee that such Substitute Property serves the municipal purposes of the City and constitutes property which the City is permitted to lease under the laws of the State of California, and has been determined to be essential to the proper, efficient and economic operation of the City and to serve an essential governmental function of the City.
- (e) The Substitute Property does not cause the City to violate any of its covenants, representations and warranties made herein or in the Trust Agreement.
- (f) The City has filed with the Authority and the Trustee an MAI fair market appraisal or other written documentation which establishes that the estimated value and the fair rental value of the Substitute Property are at least equal to the estimated value and the fair rental value, respectively, of the Former Property, and that the useful life of the Substitute Property at least equals the lesser of (i) the useful life of the Former Property, or (ii) the final Lease Payment Date of the Lease Payments allocable thereto.
- (g) The City has obtained an opinion of Bond Counsel stating that the substitution will not adversely affect the tax-exempt status of the Certificates.
- (h) The City has mailed written notice of such substitution to each rating agency which then maintains a rating on the Certificates.

Upon the satisfaction of all such conditions precedent, the Term of this Lease will thereupon end as to the Former Property and commence as to the Substitute Property, and all references to the Former Property will apply with full force and effect to the Substitute Property. The City is not entitled to any reduction, diminution, extension or other modification of the Lease Payments whatsoever as a result of such substitution. The Authority and the City will execute, deliver and cause to be recorded all documents required to discharge this Lease against the Former Property.

SECTION 4.7. *Release of Property.* The City has the option at any time and from time to time to release any portion of the Leased Property from this Lease and the Site Lease (the "Released Property") provided that the City has satisfied all of the following requirements which are hereby declared to be conditions precedent to such release:

- (a) No Event of Default has occurred and is continuing.
- (b) The City has filed with the Authority and the Trustee, and has caused to be recorded in the office of the Alameda County Recorder sufficient memorialization of, an amendment hereof which removes the Released Property from this Lease and the Site Lease.

- (c) The City has certified in writing to the Authority and the Trustee that the estimated value of the property which remains subject to this Lease and the Site Lease following such removal is at least equal to the aggregate original principal amount of the Certificates, and the fair rental value of the property which remains subject to this Lease and the Site Lease following such removal is at least equal to the Lease Payments thereafter coming due and payable hereunder.
- (d) The City has mailed written notice of such removal to each rating agency which then maintains a rating on the Certificates.
- (e) The City has obtained evidence that the title insurance policy required by Section 5.5 is not adversely affected by the release.
- (f) The City has obtained an opinion of Bond Counsel stating that the release will not adversely affect the tax-exempt status of the Certificates.

Upon the satisfaction of all such conditions precedent, the Term of this Lease will thereupon end as to the Released Property. The City is not entitled to any reduction, diminution, extension or other modification of the Lease Payments whatsoever as a result of such release. The Authority and the City shall execute, deliver and cause to be recorded all documents required to discharge this Lease and the Site Lease of record against the Released Property.

SECTION 4.8. *No Merger.* It is the express intention of the Authority and the City that this Lease and the obligations of the parties hereunder are separate and distinct from the Site Lease and the obligations of the parties thereunder, and that during the term of the Site Lease and this Lease no merger of title or interest may occur or be deemed to occur as a result of the respective positions of the Authority and the City thereunder and hereunder.

ARTICLE V

MAINTENANCE, TAXES, INSURANCE AND OTHER MATTERS

SECTION 5.1. *Maintenance, Utilities, Taxes and Assessments.* Throughout the Term of this Lease, as part of the consideration for the rental of the Leased Property, all improvement, repair and maintenance of the Leased Property are the sole responsibility of the City, and the City will pay for or otherwise arrange for the payment of all utility services supplied to the Leased Property, which may include, without limitation, janitor service, security, power, gas, telephone, light, heating, water and all other utility services, and shall pay for or otherwise arrange for the payment of the cost of the repair and replacement of the Leased Property resulting from ordinary wear and tear or want of care on the part of the City or any assignee or sublessee thereof. In exchange for the Lease Payments herein provided, the Authority agrees to provide only the Leased Property, as hereinbefore more specifically set forth. The City waives the benefits of subsections 1 and 2 of Section 1932, Section 1933(4) and Sections 1941 and 1942 of the California Civil Code, but such waiver does not limit any of the rights of the City under the terms of this Lease.

The City will also pay or cause to be paid all taxes and assessments of any type or nature, if any, charged to the Authority or the City affecting the Leased Property or the respective interests or estates therein; provided that with respect to special assessments or other governmental charges that may lawfully be paid in installments over a period of years, the City is obligated to pay only such installments as are required to be paid during the Term of this Lease as and when the same become due.

The City may, at the City's expense and in its name, in good faith contest any such taxes, assessments, utility and other charges and, in the event of any such contest, may permit the taxes, assessments or other charges so contested to remain unpaid during the period of such contest and any appeal therefrom unless the Authority notifies the City that, in its reasonable opinion, by nonpayment of any such items the interest of the Authority in the Leased Property will be materially endangered or the Leased Property or any part thereof will be subject to loss or forfeiture, in which event the City shall promptly pay such taxes, assessments or charges or provide the Authority with full security against any loss which may result from nonpayment, in form satisfactory to the Authority and the Trustee.

SECTION 5.2. *Modification of Leased Property.* The City has the right, at its own expense, to make additions, modifications and improvements to the Leased Property or any portion thereof. All additions, modifications and improvements to the Leased Property will thereafter comprise part of the Leased Property and become subject to the provisions of this Lease. Such additions, modifications and improvements may not in any way damage the Leased Property, or cause the Leased Property to be used for purposes other than those authorized under the provisions of state and federal law; and the Leased Property, upon completion of any additions, modifications and improvements made thereto under this Section, must be of a value which is not substantially less than the value thereof immediately prior to the making of such additions, modifications and improvements. The City will not permit any mechanic's or other lien to be established or remain against the Leased Property for labor or materials furnished in connection with

any remodeling, additions, modifications, improvements, repairs, renewals or replacements made by the City under this Section; provided that if any such lien is established and the City first notifies the Authority of the City's intention to do so, the City may in good faith contest any lien filed or established against the Leased Property, and in such event may permit the items so contested to remain undischarged and unsatisfied during the period of such contest and any appeal therefrom and shall provide the Authority with full security against any loss or forfeiture which might arise from the nonpayment of any such item, in form satisfactory to the Authority. The Authority will cooperate fully in any such contest, upon the request and at the expense of the City.

SECTION 5.3. *Public Liability and Property Damage Insurance.* The City will maintain or cause to be maintained, throughout the Term of this Lease, comprehensive general insurance in protection of the Authority, the City and their respective members, officers, agents, employees and assigns. Such insurance must provide for indemnification of said parties against direct or contingent loss or liability for damages for bodily and personal injury, death or property damage occasioned by reason of the operation of the Leased Property. Such insurance must provide coverage in such liability limits and be subject to such deductibles as the City deems adequate and prudent. Such insurance may be maintained as part of or in conjunction with any other insurance coverage carried by the City, and may be maintained in whole or in part in the form of a program of self-insurance by the City subject to the provisions of Section 5.7, or in the form of the participation by the City in a joint powers authority or other program providing pooled insurance. The City shall apply the proceeds of such insurance toward extinguishment or satisfaction of the liability with respect to which the net proceeds are paid.

SECTION 5.4. *Casualty Insurance.* The City will procure and maintain, or cause to be procured and maintained, at all times throughout the Term of this Lease, casualty insurance against loss or damage to the insured buildings, facilities and other improvements constituting any part of the Leased Property, in an amount at least equal to the lesser of (a) the replacement value of such buildings, facilities and improvements, or (b) the aggregate principal amount of the Outstanding Certificates. Such insurance must, as nearly as practicable, cover loss or damage by fire, explosion, windstorm, riot, aircraft, vehicle damage, smoke and such other hazards as are normally covered by such insurance, and must include earthquake coverage if such coverage is available at reasonable cost from reputable insurers in the reasonable determination of the City, whose determination is final and conclusive. Such insurance may be subject to such deductibles as the City deems prudent. Such insurance may be maintained as part of or in conjunction with any other insurance coverage carried by the City, and may be maintained in whole or in part in the form of the participation by the City in a joint powers authority or other program providing pooled insurance; provided that such insurance may not be maintained by the City in the form of self-insurance. The City shall apply the Net Proceeds of such insurance as provided in Section 6.1.

SECTION 5.5. *Rental Interruption Insurance.* The City will procure and maintain, or cause to be procured and maintained, at all times throughout the Term of this Lease, rental interruption or use and occupancy insurance to cover loss, total or partial, of the use of the buildings, facilities and other improvements constituting any part of the Leased Property, as a result of any of the hazards covered in the insurance required by Section 5.4, in an amount at least equal to the maximum Lease Payments coming due and payable during any two consecutive Fiscal Years during the remaining Term of this

Lease. Such insurance may be maintained as part of or in conjunction with any other insurance coverage carried by the City, and may be maintained in whole or in part in the form of the participation by the City in a joint powers authority or other program providing pooled insurance; provided that such insurance may not be maintained by the City in the form of self-insurance. The Net Proceeds of such insurance, if any, shall be paid to the Trustee and deposited in the Lease Payment Fund, and shall be credited towards the payment of the Lease Payments allocable to the insured improvements as the same become due and payable.

SECTION 5.6. *Recordation Hereof; Title Insurance.* The City will, at its expense, cause the Assignment Agreement, the Site Lease and this Lease to be recorded in the office of the Alameda County Recorder immediately following the execution and delivery hereof. Concurrently, the City shall obtain a CLTA title insurance policy insuring the City's leasehold estate in the Leased Property hereunder, subject only to Permitted Encumbrances, in an amount at least equal to the aggregate principal amount of the Certificates. All Net Proceeds received under such title insurance policy will be deposited with the Trustee in the Lease Payment Fund and credited towards the prepayment of the Lease Payments under Section 9.3.

SECTION 5.7. *Insurance Net Proceeds; Form of Policies.* Each policy of insurance maintained under Sections 5.4, 5.5 and 5.6 must name the Trustee as loss payee so as to provide that all proceeds thereunder are payable to the Trustee. The City shall pay or cause to be paid when due the premiums for all insurance policies required by this Lease. All such policies shall provide that the Trustee is given 30 days' notice of each expiration, any intended cancellation thereof or reduction of the coverage provided thereby. The Trustee has no responsibility for the sufficiency, adequacy or amount of any insurance or self-insurance herein required and is fully protected in accepting payment on account of such insurance or any adjustment, compromise or settlement of any loss. The City shall deliver to the Trustee on or before each March 31, a certificate that all insurance required under this Lease Agreement is in full force and effect. The Trustee shall be entitled to rely upon such certificate of the District as to the District's compliance with this Article V.

If any insurance maintained under Section 5.3 is provided in the form of self-insurance, the City must file with the Trustee annually, within 90 days following the close of each Fiscal Year, a statement of an independent insurance adviser engaged by the City identifying the extent of such self-insurance and stating the determination that the City maintains sufficient reserves with respect thereto. If any such insurance is provided in the form of self-insurance by the City, the City is not obligated to make any payment with respect to any insured event except from such reserves.

SECTION 5.8. *Installation of City's Personal Property.* The City may at any time and from time to time, in its sole discretion and at its own expense, install or permit to be installed other items of equipment or other personal property in or upon the Leased Property. All such items will remain the sole property of the City, in which neither the Authority nor the Trustee has any interest, and may be modified or removed by the City at any time, provided that the City must repair and restore any and all damage to the Leased Property resulting from the installation, modification or removal of any such items. Nothing in this Lease prevents the City from purchasing or leasing items to be installed under this Section under a lease or conditional sale agreement, or subject to a vendor's lien or security agreement, as security for the unpaid portion of the purchase

price thereof, provided that no such lien or security interest attaches to any part of the Leased Property.

SECTION 5.9. *Liens.* The City may not, directly or indirectly, create, incur, assume or suffer to exist any mortgage, pledge, lien, charge, encumbrance or claim on or with respect to the Leased Property, other than as herein contemplated and except for such encumbrances, as the City certifies in writing to the Trustee, do not materially and adversely affect the leasehold estate in the Leased Property hereunder. Except as expressly provided in this Article, the City will promptly, at its own expense, take such action as may be necessary to duly discharge or remove any such mortgage, pledge, lien, charge, encumbrance or claim, for which it is responsible, if the same shall arise at any time. The City will reimburse the Authority for any expense incurred by it in order to discharge or remove any such mortgage, pledge, lien, charge, encumbrance or claim.

SECTION 5.10. *Advances.* If the City fails to perform any of its obligations under this Article V, the Authority may take any necessary action to cure the failure, including the advancement of money, and the City shall repay all such advances as additional rental hereunder, with interest at the rate set forth in Section 4.3(c).

ARTICLE VI

DAMAGE, DESTRUCTION AND EMINENT DOMAIN; USE OF NET PROCEEDS

SECTION 6.1. *Application of Net Proceeds.* The Net Proceeds of any insurance award resulting from any damage to or destruction of the Leased Property by fire or other casualty shall be paid to the Trustee, as assignee of the Authority under the Assignment Agreement, and deposited in the Insurance and Condemnation Fund to be applied as set forth in Section 6.01 of the Trust Agreement. The City shall pay the Net Proceeds of any eminent domain award with respect to the Leased Property resulting from an event described in Section 6.2 to the Trustee for deposit in the Insurance and Condemnation Fund, to be applied as set forth in Section 6.02 of the Trust Agreement.

SECTION 6.2. *Termination or Abatement Due to Eminent Domain.* If the Leased Property is taken permanently under the power of eminent domain or sold to a government threatening to exercise the power of eminent domain, the Term of this Lease will cease with respect thereto as of the day possession is so taken. If less than all of the Leased Property is taken permanently, or if the Leased Property is taken temporarily, under the power of eminent domain, (a) this Lease will continue in full force and effect with respect thereto and will not be terminated by virtue of such taking and the parties waive the benefit of any law to the contrary, and (b) there will be a partial abatement of Lease Payments allocated thereto, in an amount to be determined by the City such that the resulting Lease Payments represent fair consideration for the use and occupancy of the remaining usable portions of the Leased Property. Notwithstanding the foregoing, the Lease Payments will not be abated under this Section 6.2 to the extent that amounts in the Reserve Fund are available to pay Lease Payments which would otherwise be abated under this Section 6.2, it being hereby declared that such proceeds and amounts constitute a special fund for the payment of the Lease Payments.

SECTION 6.3. *Abatement Due to Damage or Destruction.* The amount of Lease Payments will be abated during any period in which by reason of damage or destruction (other than by eminent domain which is hereinbefore provided for) there is substantial interference with the use and occupancy by the City of the Leased Property or any portion thereof. The amount of such abatement shall be determined by the City such that the resulting Lease Payments represent fair consideration for the use and occupancy of the portions of the Leased Property not damaged or destroyed. Such abatement shall continue for the period commencing with such damage or destruction and ending with the substantial completion of the work of repair or reconstruction. In the event of any such damage or destruction, this Lease shall continue in full force and effect and the City waives any right to terminate this Lease by virtue of any such damage and destruction. Notwithstanding the foregoing, there shall be no abatement of Lease Payments under this Section 6.3 to the extent that the proceeds of hazard insurance, rental interruption insurance or amounts in the Reserve Fund are available to pay Lease Payments which would otherwise be abated under this Section 6.3, it being hereby declared that such proceeds and amounts constitute a special fund for the payment of the Lease Payments.

ARTICLE VII

OTHER COVENANTS

SECTION 7.1. *Disclaimer of Warranties.* THE AUTHORITY MAKES NO AGREEMENT, WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE VALUE, DESIGN, CONDITION, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR FITNESS FOR THE USE CONTEMPLATED BY THE CITY OF THE LEASED PROPERTY OR ANY PORTION THEREOF, OR ANY OTHER REPRESENTATION OR WARRANTY WITH RESPECT TO THE LEASED PROPERTY OR ANY PORTION THEREOF. THE CITY ACKNOWLEDGES THAT THE AUTHORITY IS NOT A MANUFACTURER OF ANY PORTION OF THE LEASED PROPERTY OR A DEALER THEREIN, THAT THE CITY LEASES THE LEASED PROPERTY AS-IS, IT BEING AGREED THAT ALL OF THE AFOREMENTIONED RISKS ARE TO BE BORNE BY THE CITY. In no event is the Authority or the Trustee liable for incidental, indirect, special or consequential damages, in connection with or arising out of this Lease or the Trust Agreement for the existence, furnishing, functioning or the City's use of the Leased Property.

SECTION 7.2. *Access to the Leased Property.* The City agrees that the Authority and any Authority Representative, and the Authority's successors or assigns, may at all reasonable times enter upon and to examine and inspect the Leased Property or any part thereof. The Authority and any Authority Representative have such rights of access to the Leased Property or any component thereof as may be reasonably necessary to cause the proper maintenance of the Leased Property in the event of failure by the City to perform its obligations hereunder; *provided, however*, that neither the Authority nor any of its assigns has any obligation to cause such proper maintenance.

SECTION 7.3. *Release and Indemnification Covenants.* The City shall indemnify the Authority and the Trustee, and their respective officers, agents, successors and

assigns against all claims, losses and damages, including legal fees and expenses, arising out of any of the following:

- (a) the use, maintenance, condition or management of, or from any work or thing done on the Leased Property,
- (b) any breach or default on the part of the City in the performance of any of its obligations under this Lease,
- (c) any negligence or willful misconduct of the City or of any of its agents, contractors, servants, employees or licensees with respect to the Leased Property,
- (d) any intentional misconduct or negligence of any sublessee of the City with respect to the Leased Property, or
- (e) the acceptance and administration of the Trust Agreement and this Lease.

No indemnification is made under this Section or elsewhere in this Lease for willful misconduct or negligence under this Lease by the Authority or the Trustee, or their respective officers, agents, employees, successors or assigns. The Trustee's rights under Sections 4.4 and 7.3 survive the defeasance of the Certificates, the termination of this Lease and the resignation or removal of the Trustee.

SECTION 7.4. *Assignment and Subleasing by the City.* This Lease may not be assigned by the City. The City may sublease the Leased Property, or any portion thereof, subject to all of the following conditions:

- (a) This Lease and the obligation of the City to make Lease Payments hereunder must remain obligations of the City.
- (b) The City must, within 30 days after the delivery thereof, furnish or cause to be furnished to the Authority and the Trustee a true and complete copy of such sublease.
- (c) No such sublease by the City may cause the Leased Property to be used for a purpose which is not authorized under the provisions of the laws of the State of California, as certified by the City.
- (d) The City must furnish the Authority and the Trustee with a written opinion of Bond Counsel stating that such sublease does not cause the interest components of the Lease Payments to become includable in gross income for purposes of federal income taxation or to become subject to personal income taxation by the State of California.

SECTION 7.5. *Amendment of Lease Agreement.* The Authority and the City may at any time amend or modify any of the provisions of this Lease, but only: (a) with the prior written consents of the Owners of a majority in aggregate principal amount of the Outstanding Certificates; or (b) without the consent of the Trustee or any of the

Certificate Owners, but only if such amendment or modification is for any one or more of the following purposes:

- (i) to add to the covenants and agreements of the City contained in this Lease, other covenants and agreements thereafter to be observed, or to limit or surrender any rights or power herein reserved to or conferred upon the City,
- (ii) to cure any ambiguity, or to cure, correct or supplement any defective provision contained herein, for the purpose of conforming to the original intention of the City and the Authority,
- (iii) to amend any provision thereof relating to the Tax Code, but only if and to the extent such amendment will not adversely affect the exclusion from gross income of interest represented by any of the Certificates under the Tax Code, in the opinion of Bond Counsel,
- (iv) to amend the description of any component of the Leased Property to reflect accurately the property originally intended to be included therein, or to effectuate any substitution of property as permitted by Section 4.6 or any release of property as permitted by Section 4.5,
- (v) to obligate the City to pay additional amounts of rental hereunder for the use and occupancy of the Leased Property or any portion thereof, but only if (A) such additional amounts of rental are pledged or assigned for the payment of any bonds, notes, leases or other obligations the proceeds of which are applied to finance improvements to the Leased Property, and (B) the City has filed with the Trustee written evidence that the amendments made under this subsection (v) will not of themselves cause a reduction or withdrawal of any rating then assigned to the Certificates, or
- (vi) in any other respect whatsoever as the Authority and the City deem necessary or desirable, provided that, in the opinion of Bond Counsel, such modifications or amendments do not materially adversely affect the interests of the Owners of the Certificates.

The City must obtain and cause to be filed with the Trustee an opinion of Bond Counsel with respect to any amendment or modification hereof, stating that all conditions precedent to such amendment as set forth in this Section 7.5 have been satisfied. Promptly following the effective date of any amendment or modification under this Section, the City must mail written notice thereof to each rating agency which then maintains a rating on the Certificates.

SECTION 7.6. *Provisions Relating to Reserve Policy.* [to come]

ARTICLE VIII

EVENTS OF DEFAULT AND REMEDIES

SECTION 8.1. *Events of Default Defined.* Each of the following events constitutes an Event of Default hereunder:

- (a) Failure by the City to pay any Lease Payment or other payment required to be paid hereunder at the time specified herein.
- (b) Failure by the City to observe and perform any covenant, condition or agreement on its part to be observed or performed herein or in the Trust Agreement, other than as referred to in the preceding subsection (a), for a period of 30 days after written notice specifying such failure and requesting that it be remedied has been given to the City by the Authority or the Trustee; *provided, however*, that if the City notifies the Authority in the reasonable opinion of the City the failure stated in the notice can be corrected, but not within such 30 day period, the failure will not constitute an Event of Default if the City commences to cure the failure within such 30 day period and thereafter diligently and in good faith cures such failure in a reasonable period of time, which period of time shall be no longer than 180 days from the date of delivery of such notice of failure to the City.
- (c) The filing by the City of a voluntary petition in bankruptcy, or failure by the City promptly to lift any execution, garnishment or attachment, or adjudication of the City as a bankrupt, or assignment by the City for the benefit of creditors, or the entry by the City into an agreement of composition with creditors, or the approval by a court of competent jurisdiction of a petition applicable to the City in any proceedings instituted under the provisions of the Federal Bankruptcy Code, as amended, or under any similar acts which may hereafter be enacted.

SECTION 8.2. *Remedies on Default.* Whenever any Event of Default has happened and is continuing, the Authority may exercise any and all remedies available under law or granted under this Lease and the Trustee will have the right to re-enter and re-let the Leased Property and to terminate this Lease. Notwithstanding anything herein or in the Trust Agreement to the contrary, there is no right under any circumstances to accelerate the Lease Payments or otherwise declare any Lease Payments not then in default to be immediately due and payable. Each and every covenant hereof to be kept and performed by the City is expressly made a condition and upon the breach thereof the Authority may exercise any and all rights granted hereunder; provided, that no termination of this Lease shall be effected either by operation of law or acts of the parties hereto, except only in the manner herein expressly provided. Upon the occurrence and during the continuance of any Event of Default, the Authority may exercise each and every one of the following remedies, subject in all respects to the limitations set forth in Section 8.3.

- (a) Enforcement of Payments Without Termination. If the Authority does not elect to terminate this Lease in the manner hereinafter provided for in subsection (b) of this Section, the City agrees to remain liable for the payment of all Lease Payments and the performance of all conditions herein contained and shall reimburse the Authority for any deficiency arising out of the re-leasing of the Leased Property, or, if the Authority is unable to re-lease the Leased Property, then for the full amount of all Lease Payments to the end of the Term of this Lease, but said Lease Payments and/or deficiency shall be payable only at the same time and in the same manner as hereinabove provided for the payment of Lease Payments hereunder, notwithstanding such entry or re-entry by the Authority or any suit in unlawful detainer, or otherwise, brought by the Authority for the purpose of effecting such re-entry or obtaining possession of the Leased Property or the exercise of any other remedy by the Authority.

The City hereby irrevocably appoints the Authority as the agent and attorney-in-fact of the City to enter upon and re-lease the Leased Property upon the occurrence and continuation of an Event of Default and to remove all personal property whatsoever situated upon the Leased Property, to place such property in storage or other suitable place in the County of Alameda for the account of and at the expense of the City, and the City hereby agrees to save harmless the Authority from any costs, loss or damage whatsoever arising or occasioned by any such entry upon and re-leasing of the Leased Property and the removal and storage of such property by the Authority or its duly authorized agents in accordance with the provisions herein contained. The City agrees that the terms of this Lease constitute full and sufficient notice of the right of the Authority to re-lease the Leased Property in the event of such re-entry without effecting a surrender of this Lease, and further agrees that no acts of the Authority in effecting such re-leasing constitute a surrender or termination of this Lease irrespective of the term for which such re-leasing is made or the terms and conditions of such re-leasing, or otherwise, but that, on the contrary, in the event of such default by the City the right to terminate this Lease shall vest in the Authority to be effected in the sole and exclusive manner hereinafter provided for in subsection (b) of this Section. The City agrees to surrender and quit possession of the Leased Property upon demand of the Authority for the purpose of enabling the Leased Property to be re-let under this paragraph. Any rental obtained by the Authority in excess of the unpaid Lease Payments shall be deposited with the Trustee in the Lease Payment Fund, to be applied as a credit against future Lease Payments.

- (b) Termination of Lease. If an Event of Default occurs and is continuing hereunder, the Authority at its option may terminate this Lease and re-lease all or any portion of the Leased Property. If the Authority terminates this Lease at its option and in the manner hereinafter provided on account of default by the City (and

notwithstanding any re-entry upon the Leased Property by the Authority in any manner whatsoever or the re-leasing of the Leased Property), the City nevertheless agrees to pay to the Authority all costs, loss or damages howsoever arising or occurring payable at the same time and in the same manner as is herein provided in the case of payment of Lease Payments and Additional Payments. Any surplus received by the Authority from such re-leasing shall be deposited in the Lease Payment Fund. Neither notice to pay rent or to deliver up possession of the premises given under law nor any proceeding in unlawful detainer taken by the Authority shall of itself operate to terminate this Lease, and no termination of this Lease on account of default by the City shall be or become effective by operation of law, or otherwise, unless and until the Authority has given written notice to the City of the election on the part of the Authority to terminate this Lease. The City agrees that no surrender of the Leased Property, or of the remainder of the Term hereof or any termination of this Lease shall be valid in any manner or for any purpose whatsoever unless stated or accepted by the Authority by such written notice.

- (c) Proceedings at Law or In Equity. If an Event of Default occurs and continues hereunder, the Authority may take whatever action at law or in equity may appear necessary or desirable to collect the amounts then due and thereafter to become due hereunder or to enforce any other of its rights hereunder.

SECTION 8.3. *No Remedy Exclusive.* No remedy herein conferred upon or reserved to the Authority is intended to be exclusive and every such remedy is cumulative and in addition to every other remedy given under this Lease or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon the occurrence of any Event of Default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Authority to exercise any remedy reserved to it in this Article VIII it is not necessary to give any notice, other than such notice as may be required in this Article VIII or by law.

SECTION 8.4. *Agreement to Pay Attorneys' Fees and Expenses.* If either party to this Lease defaults under any of the provisions hereof and the non-defaulting party employs attorneys or incurs other expenses for the collection of moneys or the enforcement or performance or observance of any obligation or agreement on the part of the defaulting party herein contained, the defaulting party agrees that it will on demand therefor pay to the non-defaulting party the reasonable fees of such attorneys and such other expenses so incurred by the non-defaulting party.

SECTION 8.5. *No Additional Waiver Implied by One Waiver.* If any agreement contained in this Lease is breached by either party and thereafter waived by the other party, such waiver will be limited to the particular breach so waived and will not constitute a waiver of any other breach hereunder.

SECTION 8.6. *Application of Proceeds.* All net proceeds received from the release of the Leased Property under this Article VIII, and all other amounts derived by the Authority or the Trustee as a result of the occurrence of an Event of Default, shall be paid to the Trustee and applied in accordance with Section 12.04 of the Trust Agreement.

SECTION 8.7. *Trustee and Certificate Owners to Exercise Rights.* Such rights and remedies as are given to the Authority under this Article VIII have been assigned by the Authority to the Trustee under the Assignment Agreement for the benefit of the Certificate Owners, to which assignment the City hereby consents. The Trustee and the Certificate Owners shall exercise such rights as provided in the Trust Agreement.

ARTICLE IX

PREPAYMENT OF LEASE PAYMENTS

SECTION 9.1. *Security Deposit.* Notwithstanding any other provision of this Lease, the City may on any date secure the payment of the Lease Payments in whole or in part by depositing with the Trustee an amount of cash which, together with other available amounts on deposit in the funds and accounts established under the Trust Agreement, is either:

- (a) sufficient to pay such Lease Payments, including the principal and interest components thereof, in accordance with the Lease Payment schedule set forth in Appendix B, or
- (b) invested in whole or in part in non-callable Federal Securities in such amount as will, in the opinion of an independent certified public accountant (which opinion must be addressed and delivered to the Trustee), together with interest to accrue thereon and together with any cash which is so deposited, be fully sufficient to pay such Lease Payments when due under Section 4.3(a) as the City instructs at the time of said deposit.

If the City posts a security deposit under this Section with respect to all unpaid Lease Payments and if the City has paid or caused to be paid all Additional Payments then due and payable, and notwithstanding the provisions of Section 4.2, (a) the Term of this Lease will continue, (b) all obligations of the City under this Lease, and all security provided by this Lease for said obligations, will thereupon cease and terminate, excepting only the obligation of the City to make, or cause to be made all of the Lease Payments from such security deposit, and (c) under Section 4.6, title to the Leased Property will vest in the City on the date of said deposit automatically and without further action by the City or the Authority. Said security deposit constitutes a special fund for the payment of Lease Payments in accordance with the provisions of this Lease.

SECTION 9.2. *Optional Prepayment.*

(a) The City may exercise its option to prepay the principal components of the Lease Payments that are allocable to the Series A Certificates (as such components

are shown in Exhibit B) in whole, or in part in any integral multiple of \$5,000, on any Interest Payment Date on or after November 1, 20__, by paying a prepayment price equal to the aggregate principal components of the Lease Payments to be prepaid, together with the interest component of the Lease Payment required to be paid on such date, without prepayment premium. Such prepayment price shall be deposited by the Trustee upon receipt in the Lease Payment Fund, to be applied to the prepayment of Certificates under Section 3.01(a) of the Trust Agreement. The City shall give the Trustee written notice of its intention to exercise its option not less than 45 days in advance of the date of exercise.

(b) The City has no right to prepay the principal components of the Lease Payments that are allocable to the Series B Certificates (as such components are shown in Exhibit B).

SECTION 9.3. *Mandatory Prepayment From Net Proceeds of Insurance or Eminent Domain.* The City is obligated to prepay the principal components of the Lease Payments, in whole or in part on any date, from and to the extent of any Net Proceeds of insurance award or eminent domain award with respect to the Leased Property theretofore deposited in the Lease Payment Fund for such purpose under Article VI hereof and Article VI of the Trust Agreement. The City and the Authority hereby agree that such Net Proceeds, to the extent remaining after payment of any delinquent Lease Payments, shall be credited towards the City's obligations under this Section 9.3. Such prepayment price shall be deposited by the Trustee in the Lease Payment Fund to be applied to the prepayment of Certificates under Section 3.01(b) of the Trust Agreement.

SECTION 9.4. *Credit for Amounts on Deposit.* If the City prepays the principal components of the Lease Payments in full under Sections 9.2 or 9.3, such that the Trust Agreement is discharged by its terms as a result of such prepayment, at the written election of the City filed with the Trustee any or all amounts then on deposit in the Lease Payment Fund or the Reserve Fund will be credited towards the amounts then required to be so prepaid.

ARTICLE X

MISCELLANEOUS

SECTION 10.1. *Notices.* Any notice, request, complaint, demand or other communication under this Lease may be given by first class mail or personal delivery to the party entitled thereto at its address set forth below, or by facsimile transmission or other form of telecommunication, at its number set forth below. Notice is effective either (a) upon transmission by facsimile transmission or other form of telecommunication, (b) 72 hours after deposit in the United States of America first class mail, postage prepaid, or (c) in the case of personal delivery to any person, upon actual receipt. The Authority, the City or the Trustee may, by written notice to the other parties, from time to time modify the address or number to which communications are to be given hereunder.

*If to the City
or the Authority:*

City of Hayward
777 B Street, 2nd Floor
Hayward, California 94541
Attention: Director of Finance
Fax: (510) 583-3600

If to the Trustee:

The Bank of New York Mellon
Trust Company, N.A.
100 Pine Street, Suite #3150
San Francisco, California 94111
Attention: Corporate Trust Department
Fax: (415) 399-1647

SECTION 10.2. *Binding Effect.* This Lease inures to the benefit of and is binding upon the Authority, the City and their respective successors and assigns.

SECTION 10.3. *Severability.* If any provision of this Lease is held invalid or unenforceable by any court of competent jurisdiction, such holding does not invalidate or render unenforceable any other provision hereof.

SECTION 10.4. *Net-net-net Lease.* This Lease is a “net-net-net lease” and the City hereby agrees that the Lease Payments are an absolute net return to the Authority, free and clear of any expenses, charges or set-offs whatsoever.

SECTION 10.5. *Third Party Beneficiary.* The Trustee is hereby made a party beneficiary hereunder with all rights of a third party beneficiary.

SECTION 10.6. *Further Assurances and Corrective Instruments.* The Authority and the City shall, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for correcting any inadequate or incorrect description of the Leased Property hereby leased or intended so to be or for carrying out the expressed intention of this Lease.

SECTION 10.7. *Execution in Counterparts.* This Lease may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

SECTION 10.8. *Applicable Law.* This Lease is governed by and construed in accordance with the laws of the State of California.

SECTION 10.9. *Authority and City Representatives.* Whenever under the provisions of this Lease the approval of the Authority or the City is required, or the Authority or the City is required to take some action at the request of the other, such approval or such request shall be given for the Authority by an Authority Representative and for the City by a City Representative, and any party hereto shall be authorized to rely upon any such approval or request.

SECTION 10.10. *Captions.* The captions or headings in this Lease are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Lease.

IN WITNESS WHEREOF, the Authority and the City have caused this Lease to be executed in their respective names by their duly authorized officers, all as of the date first above written.

**HAYWARD PUBLIC FINANCING
AUTHORITY, *as lessor***

By: _____
Treasurer

Attest:

Secretary

CITY OF HAYWARD, *as lessee*

By: _____
Director of Finance

Attest:

City Clerk

APPENDIX A

DESCRIPTION OF THE LEASED PROPERTY

The property constituting the Leased Property consists of the land located in the City of Hayward, County of Alameda, State of California, which is described as follows, including all buildings, improvements and facilities at any time situated thereon.

APPENDIX B

SCHEDULE OF LEASE PAYMENTS

Lease Payments Allocable to the Series A Certificates

<u>Lease Payment Date*</u>	<u>Principal Component</u>	<u>Interest Component</u>	<u>Aggregate Lease Payment</u>
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TOTAL

* Lease Payments are due no later than the 15th Business Day preceding each of the listed payment dates.

Lease Payments Allocable to the Series B Certificates

<u>Lease Payment Date*</u>	<u>Principal Component</u>	<u>Interest Component</u>	<u>Aggregate Lease Payment</u>
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TOTAL

* Lease Payments are due no later than the 15th Business Day preceding each of the listed payment dates.

Aggregate Lease Payments

<u>Lease Payment Date*</u>	<u>Principal Component</u>	<u>Interest Component</u>	<u>Aggregate Lease Payment</u>
--------------------------------	--------------------------------	-------------------------------	------------------------------------

TOTAL

* Lease Payments are due no later than the 15th Business Day preceding each of the listed payment dates.